IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 13TH FEBRUARY, 2007 / 24TH MAGHA, 1928

CRL.A.No. 167 of 2003(B)

(CC.381/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA)

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APPELLANT/COMPLAINANT

A.E.THOMAS S/O. LATE ITHAPPIRI
EDAPPATTUKARA HOUSE, SOUTH MARADI P.O.,
MUVATTUPUZHA.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENTS/ ACCUSED & STATE

1. GIBI KURIAKOSE, MUTHEDATHEKUDDIYIL HOUSE,
SOUTH MARADI P.O., MUVATTUPUZHA.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.V.G.ARUN
BY PUBLIC PROSECUTOR SRI.S.DILEEP.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN , J.

Crl.Appeal No. 167 of 2003 B

Dated this the 13th day of February, 2007

J U D G M E N T

When the petition for early posting came up today, with the consent of counsel on both sides, the appeal itself was taken up and heard.

2. By the impugned order, the trial court acquitted the first respondent on the sole ground that the appellant/complainant did not appear before the court. Counsel appearing for the appellant submits that the case was posted for hearing and the learned Magistrate did not consider the case in the light of the judgments of this Court reported in **Don Bosco** v. **Partech Computers Ltd.** (2005 (2) KLT 1003), **G.F.S.Chit & Loans (P) Ltd.** v. **Rajesh** (2006(3) KLT 825) and the Supreme Court reported in **Associated Cement Co. Ltd.** v. **Keshvanand** (1998(1) KLT 179) (SC). Counsel appearing for the appellant submits that actually, the case was posted for return of warrant issued to the first respondent and the case was advanced by the counsel appearing for the first respondent and the

warrant was received by hand, but he could not serve the same and the case was posted on 3rd September, 2001. On that date, without considering the above facts, the trial court acquitted the first respondent, only due to the absence of the appellant/complainant. A reading of the order would show that the Magistrate had not applied his judicial discretion while ordering acquittal of the first respondent. This Court in in *Don Bosco's case* (cited supra) categorically held that the Magistrate should apply his judicial discretion with the required judicial caution while dismissing the complaint and acquitting the accused. Further, in *G.F.S.Chit's case* (cited supra), this Court had held that the courts should also bear in mind that unmerited, thoughtless disposal gives a wrong signal to the society, staking even public confidence in the system of administration of justice. It is wise to remember as well that unwarranted haste can curdle unexpected errors. Further, in **Associated Cement Co.Ltd.** v. **Keshvanand** (1998 (1) KLT 179), the Apex Court held in para 17 of the judgment as follows:-

> "17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

3. Applying the principles of the above judicial pronouncements, this Court is of the view that the judgment in appeal has to be set aside and the matter

has to be sent back to the trial court. Consequently, the appeal is allowed. The trial court is directed to take back the complaint on file and resume the case from the stage where the order impugned had been passed. Both parties shall appear before the court below on **24th March,2007**.

K.THANKAPPAN,
JUDGE

Mbs/

K.THANKAPPAN, J

Crl.Appeal NO. 167 OF 2003

J U D G M E N T

DATED:13-02-2007